

**LRC Study Committee
Property Owner Protection and Rights
April 7, 2014**

**VESTED RIGHTS IN NORTH
CAROLINA**

Chad W. Essick

VESTED RIGHTS GENERALLY

- Legal protections that a property owner can rely on when developing real property to ensure a subsequently enacted regulation will not impair or prohibit their project.
- Policy question for vested rights is when the “line in the sand” should be drawn. When during the development process should “vesting” occur?
- The answer varies state by state.

FOUR WAYS TO VEST IN NORTH CAROLINA

- Valid Building Permits (1985)
- Site-Specific Development Plans and Phased Development Plans (1990) (With Limitations)
- Development Agreements (2005 – Rarely Used)
- Common Law (Case Law)

VALID BUILDING PERMIT

- Adopted in 1985
- Once building permit issued, owner has vested right to develop the property consistent with that permit
- Only vested so long as building permit is valid
- 6 months to commence “work”
- After work commences, permit expires if no activity within 12 months

SITE SPECIFIC DEVELOPMENT PLAN

- Approved application for development
- Examples:
 - Planned unit development plan
 - Subdivision plat
 - Site Plan
 - Conditional or special use permit
- Local ordinance defines what constitutes a site specific development plan
- Each jurisdiction varies significantly on the process and level of detail required for plans.

Phased Development Plans

- At the option of the local government – not required
- Less detail than a specified plan and developer may give more details in future
- Vesting may be limited to zoning classification

Site Specific and Phased Plans

- Determined by local ordinance
- Two to five year vesting period
- Public notice and hearing
- Document identified at the time of approval
- Some ability to revoke
 - Threat to health, safety and welfare
 - Compensation to owner
 - Misrepresentation by owner
 - State or Federal law enacted preventing development

Modern Day Development Process

- Development approval process has significantly changed over the last 25 years.
- Land use regulations have become very sophisticated
- Process is much longer; Multiple approvals required
- Cost in due diligence, site preparation, and plan detail have significantly increased.
- By the time a site specific plan is approved or building permit issued, developer has spent significant amounts of money.
- Small ordinance changes can make projects no longer economically viable. (Uses, Density, Buffers, Open Space, Setbacks, Storm water)
- Local Governments have the ability to delay approvals

COMMON LAW VESTED RIGHTS

- Judicially Created Doctrine
- Case Law is Vast and Inconsistent
- Elements for claim:
 - Valid governmental “approval”
 - Reasonable reliance
 - Substantial expenditures
 - Good Faith
 - Detriment without Vested Right

No case identifies how long a common law vested right lasts.

Valid Governmental Approval

- Absence of Zoning (*In re Campsites Unlimited*)
- Special Use Permit (*Cardwell v. Smith*) (now statutory)
- Existing Zoning and/or Zoning Compliance Letters do not meet this requirement (*MLC Automotive v. So. Pines*)

MLC Automotive v. Town of So. Pines

- Plaintiff purchased 21 acres for \$1.5M
- Auto Park permitted “by right” (Zoning in place for 20 years)
- Relied on several zoning compliance letters from Town
- Leith owns property 4 years before seeking development approvals
- Obtained franchise agreement for dealership
- Submits application for first approval
- Review board delays on numerous occasions
- Citizens file rezoning petition to “down zone” property
- Town succumbs to political pressure and rezones
- Loses franchise, property value and money spent preparing site for development (\$500,000)
- Court of Appeals reverses trial court’s decision that Leith had common law vested rights. No valid governmental approval.
- Takes almost 4 years of litigation to get a final decision.

Lessons Learned From *MLC Automotive*

- Process for obtaining common law vested right is long, expensive and requires litigation.
- Inconsistent with prior appellate decisions
- Gap exists between statutory and common law vested rights
- Need for clear vesting rules that can easily be applied and provide certainty
- Highlights the problems with citizen initiated rezoning petitions

Vested Rights Made Simple

- Vesting Occurs at Time of Application Submittal
 - Easy to Determine Vesting Date
 - Not inconsistent with, but further clarifies, existing case law (*Robins v. Town of Hillsborough*)
 - Potentially Reduces Need for Lengthy Litigation to Establish a Vested Right
 - Need to define scope and duration of vested right
 - What triggers the vested right? (Application Filing)
 - What are you vested in? (Proposed Use and Development Ordinances)
- Citizen Initiated Rezoning Petitions Eliminated